IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 20TH MARCH 2007 / 29TH PHALGUNA 1928

WA.No. 248 OF 2007()

AGAINST THE JUDGEMENT IN OP.472/1999 DATED 13/09/2006
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APPELLANT: PETITIONER

RAMESHAN K., S/O. KUNJAMBU K.,
MOORKOTH HOUSE, KANHIRAM, THOTTADA P.O.,
KANNUR DISTRICT, KERALA STATE 670 607.

BY ADV. SRI.M.P.KRISHNAN NAIR

RESPONDENTS: RESPONDENTS
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1. UNION OF INDIA, REP. BY SECRETARY TO
DEFENCE OF INDIA, NEW DELHI.

2. CHIEF OF ARMY STAFF,
ARMY HEADQUARTERS, NEW DELHI.

3. ADJUTANT GENERAL, SENA BHAVAN,
DISCIPLINE & VIGILANCE, DIRECTORATE BRANCH,
ARMY HEADQUARTERS, NEW DELHI.

4. THE STATE OF KERALA, REP. BY
CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM.

BY ADV. SRI. AJITH KRISHNAN, ADDL.CGSC

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 5/03/2007, THE COURT ON 20.3.2007, DELIVERED THE FOLLOWING:

P.R. RAMAN & ANTONY DOMINIC, JJ.

W.A.NO. 248 OF 2007

DATED THIS, THE 20TH DAY OF MARCH, 2007.

J U D G M E N T

Raman, J.

Appellant is the petitioner in O.P. 472/1999. The writ petition was filed by him seeking to quash Ext.P5 and to issue a writ of mandamus directing or declaring that his discharge from service under Rule 13(a) Of the Army Act, 1954 stating that his service is no longer required on the basis of Special Verification Report is illegal and he is entitled to be reinstated in service with all service benefits including back-wages and other consequential reliefs.

2. Ext.P5 dated 23.10.1998 issued by the Government of India, Ministry of Defence, New Delhi, is an order passed on the representation made by the appellant/petitioner. He had earlier filed O.P. 19622/1996 in which this Court directed the authorities to consider his representation and pass appropriate orders thereon . Accordingly, Ext.P5 order was passed, holding that the appellant's services were not discharged based on the alleged additional verification of his character and antecedents and hence

the decision of the apex court in **State of M.P. Vs. Rama Shankakr** (AIR 1983 SC 374) and **Thampan vs. Adjutant General** (1993 (2) KLT 1012) have no application. On merits, it was held that the representation itself was filed after seventeen years of his dismissal from service and that the same cannot be verified for want of records including the Summary Court Martial proceedings, which are liable to be preserved for only three years as per the existing instructions. Considering the facts and circumstances, the relief sought for was declined. The learned Single Judge, after an elaborate consideration of the matter, found that the appellant's disengagement from the Army was on the basis of the proceedings launched against him resulting in infliction of penalty wayback in 1981 which has nothing to do with any verification report as was the case apparently put forth by him. The learned Single Judge has also noted that even as per the Defence Regulations, records need be maintained only for three years, for summary court martial. The averments in the counter affidavit and Ext.R2(a) gist of the Court Martial produced by them, disproved the contention of the appellant that no order was served on him or that no charge sheet was issued. The learned Single Judge accordingly, dismissed the writ petition. Impugning the said judgment, this writ appeal is preferred.

3. According to the appellant, he joined the military service as Guardsman in 1976. According to him, false complaints were filed against him by his Subedar, who was on inimical terms with him, and he was implicated in false cases as a result of which, an order was passed and without any enquiry or court martial, he was sentenced to undergo imprisonment for six months in jail and thereafter, on 22.9.1981 he was discharged from service under Rule 13 of the Army Rules, 1954. Since no action was taken on his representation Ext.P1 dated 29.5.1996, he was constrained to file O.P. 19622/1996, which was disposed of by this Court on 22.1.1998 directing the respondent therein to consider his representation. Thereafter, he submitted Ext.P4 representation which was rejected as per Ext.P5 order against which he preferred O.P. 472/1999. According to the appellant, he was out of employment from 1981 onwards and these circumstances would show that he was agitating the matter and the delay could not have stood in the way of considering his case on merits.

4. According to the appellant, he was implicated in a false case and an order was passed against him without proper enquiry or Court Martial and thereafter he was discharged from service under Rule 13 of the Army Rules, 1954, on 22.9.1981. In the counter affidavit filed by the respondent, it is submitted that there was no records to say that the appellant had

requested for treatment and was suffering from fever or other wise and that the Army ensures that the troops always remain physically fit and for this they are allowed to report sick and properly treated whenever they fall sick. So, the allegation that the appellant was prevented from reporting sick is not true. The allegation that he was tried summarily by his Commanding Officer due to any ill-will is also denied. According to the respondent, the appellant was tried summarily by the then Officiating Commanding Officer because he was a habitual offender and in January, 1981, while the unit was camping at Roorkee for collective training, the appellant was ordered by his platoon commander to dig a trench as part of a test exercise, which he had refused to do and a proper enquiry was ordered in the matter which proved his guilt. He was arraigned before the then Commanding Officer under Army Act Section 41(1) for disobeying the lawful command given by his superior officer and on 17.9.1981 he was awarded seven days rigorous imprisonment in military custody. On that day itself, the appellant was ordered by the Battalion Havildar Major to fall in for the pack drill as applicable to the prisoners which he did not do and thus again he disobeyed the lawful command of his superior officer. A summary of evidence was ordered and recorded, based on which the appellant was tried by Summary Court Martial under Army Act Section 41(2) and awarded sentence of three

months rigorous imprisonment in Civil Jail and he was dismissed from service on 29.9.1981. The appellant was handed over to the District Jail Dehradun on the same day with warrant of committal and right of petition for onward transmission to the District Jail of his home State. Before carrying out the Summary Court Martial, the appellant was produced before the Officiating Commanding Officer on issuing proper charge sheet and record of proceedings before the Commanding Officer under Army Rule 22 and subsequently on order of the Officiating Commanding Officer, the Summary of Evidence was recorded. The appellant was tried on 29.9.1981 by a Summary Court Martial and the sentence awarded was confirmed. He was dismissed from service by a Summary Court Martial held as per the laid down procedures and the allegation of the appellant that he was not served with a charge sheet and notice is not true. He was dismissed from service for misconduct as envisaged under Section 41(2) of the Army Act. The action on the part of the Army is justified. His representation given several years thereafter, was not received and so action could not be taken. The delay in approaching the authorities is also not explained.

5. It must be noticed that the fact being thus stated and proved, apart from the long delay of challenging the action on the part of the authorities, even on merits we do not find any ground for interference. The learned

Single Judge, in the circumstances, was justified in not exercising his discretionary remedy under Article 226 of the Constitution of India. We cannot take a different view.

In the result, the appeal fails. Dismissed.

P.R. RAMAN,
(JUDGE)

ANTONY DOMINIC,
(JUDGE)

knc/-